

# Environmental Quality Board Study of Mandatory Threshold Levels for Environmental Review



## HIGHLY IMPORTANT NATURAL RESOURCES DEVELOPMENT CATEGORY (NEW)

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### Introduction

At its January 2004 meeting, the Environmental Quality Board (EQB) asked its staff to examine the mandatory category threshold levels in the environmental review rules (MN Rules parts 4410.4300 and 4410.4400). Board members wanted to know if the thresholds are still appropriately placed to balance environmental protection and public benefit with administrative burden.

### Potential Changes: Creating a New Highly Important Natural Resources Development Category

Based on the issues described above the following actions are being considered:

- (1) Working with the Minnesota Department of Natural Resources and other stakeholders, develop revised or new mandatory EAW and EIS categories specifically taking into account the environmental impacts of developments on the periphery of highly important natural resources;
- (2) As part of developing the categories, consider the issue of what entity should be the RGU where the highly important natural resource lies in more than one county; and

### Background information

#### History

Since the 2004 legislative session, legislators and civic advocacy organizations have urged the EQB to adopt new mandatory categories for lakeshore development to address the great and growing development pressure now affecting lakeshore environments. In discussions regarding lakeshore development, it has become apparent that lakeshores are not unique and that

similar development pressures affect many other highly important natural resources. EQB has been asked to adopt a new category designed to address development on the edges of such highly important natural resources.

#### Current Thresholds

While there are no existing mandatory categories directed specifically at developments in the vicinity of highly important natural resources, the following mandatory category thresholds may apply to some such projects:

#### Mandatory Environmental Assessment Worksheet

*Industrial, commercial, and institutional  
facilities (4410.4300, Subp. 14):*

- Construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of 150,000 square feet in an unincorporated area, 300,000 square feet in a third or fourth class city, 450,000 square feet in a second class city, or 600,000 square feet in a first class city, expressed as gross floor space;
- Construction of a new or expansion of an existing industrial, commercial, or institutional facility equal to or in excess of 100,000 square feet in an unincorporated area, 200,000 square feet in a third or fourth class city, 300,000 square feet in a second class city, or 400,000 square feet in a first class city, expressed as gross floor space;
- RGU = local governmental unit.

*Residential Development in unincorporated  
areas (4410.4300, Subp. 19, item A):*

- 50 or more unattached or 75 or more attached (in groupings of 4 or more units per building) units if wastewater is treated on-lot (by ISTS), by a series of centralized septic systems, or by a single
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centralized septic system that is not owned by either the homeowners collectively or by a unit of government;

- 100 or more unattached or 150 or more attached (in groupings of 4 or more units per building) units if wastewater is treated either by a public sewer and wastewater treatment facility or by a single centralized septic tank system owned by the homeowners collectively or by a unit of government.
- RGU = local governmental unit.

*Residential Development in incorporated areas (4410.4300, Subp. 19 items B–D):*

- 100 or more unattached or 150 or more attached (in groupings of 4 or more units per building) units; or 250 or more unattached or 375 or more attached units if the project is consistent with an adopted comprehensive plan that meets the conditions specified in the EQB rules (at 4410.4300, subp. 19, item D). (Note: a certification of the Plan to the EQB may be required).
- RGU = local governmental unit.

*Campgrounds & RV Parks (4410.4300, Subp. 20):*

- Construction of, or expansion by, 50 or more sites of a seasonal or permanent recreational development accessible by vehicle.
- RGU = local governmental unit.

*Marinas (4410.4300, Subp. 25):*

- Construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or increase in water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft. A “marina” is defined to include an area for the concentrated mooring of 5 or more watercraft with at least one ancillary service such as storage, fueling, launching, repair, sanitary pumpout, or restaurant service.
- RGU = local governmental unit.

*Protected Waters & Wetlands (4410.4300, Subp. 27):*

- Projects impacting 1 or more acres of a DNR-protected water or wetland require an EAW.

- RGU = local governmental unit.

*Forestry; harvesting (4410.4300, Subp. 28):*

- Harvesting of timber for commercial purposes on public lands within a state park, historical area, wilderness area, scientific and natural area, wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or critical area that does not have an approved plan under Minnesota Statutes, section 86A.09 or 116G.07.
- Clearcutting 80 or more contiguous acres of forest, any part of which is within a shoreland area and within 100 feet of the ordinary high water mark of a lake or river.
- RGU = DNR.

*Natural areas (4410.4300, Subp. 30):*

- Projects resulting in the permanent physical encroachment on lands within a national park, state park, wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, scientific and natural area, or state trail corridor when the encroachment is inconsistent with laws applicable to the management plan prepared for the recreational unit.
- RGU = the DNR or local governmental unit.

*Mixed Residential and Commercial Developments (4410.4300, Subp. 32):*

- If a project combines residential units and any commercial components (such as hotel/motels, restaurants, retail space, etc.) the commercial components must be taken into account as well as the residential units, and the effect is that review will be required for fewer residential units as the commercial space increases. The exact method of calculation is prescribed in the rules.
- RGU = local governmental unit.

*Land Use Conversion (4410.4300, Subp. 36):*

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- Residential development where the lot size is less than 5 acres, golf courses and other development resulting in the permanent conversion of 80 or more acres of forest, naturally vegetated, native prairie or agricultural land (except for agricultural land in the Twin Cities metropolitan urban service area). (Where some residential lots are under and some over 5 acres, only those under 5 acres are counted toward the 80 acre threshold.)
- RGU = local governmental unit.

Mandatory Environmental Impact Statement  
*Residential Development in unincorporated areas (4410.4400, Subp. 14 A):*

- 100 or more unattached or 150 or more attached (in groupings of 4 or more units per building) units if wastewater is treated on-lot (by ISTS), by a series of centralized septic systems, or by a single centralized septic system that is not owned by either the homeowners collectively or by a unit of government;
- 400 or more unattached or 600 or more attached (in groupings of 4 or more units per building) units if wastewater is treated either by a public sewer and wastewater treatment facility or by a single centralized septic tank system owned by the homeowners collectively or by a unit of government.
- RGU = local govt. unit.

*Residential Development in incorporated areas (4410.4400, Subp. 14 B–D):*

- 400 or more unattached or 600 or more attached (in groupings of 4 or more units per building) units; or 1,000 or more unattached or 1,500 or more attached units if the project is consistent with an adopted comprehensive plan that meets the conditions specified in the EQB rules (at 4410.4300, subp. 19, item D). (Note: a certification of the Plan to the EQB may be required).
- RGU = local governmental unit.

*Mixed Residential and Commercial Developments (4410.4400, subp. 21):*

- If a project combines residential units and any commercial components (such as hotel/motels, restaurants, retail space, etc.) the commercial components must be taken into account as well as the residential units, and the effect is that review will be required for fewer residential units as the commercial space increases. The exact method of calculation is prescribed in the rules.

- RGU = local governmental unit.

*Marinas (4410.4400, subpart 19):*

- Construction or a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river.
- RGU = local governmental unit.

*Protected Waters & Wetlands (4410.4400, subp. 20):*

- Projects that eliminate a DNR-protected water or wetland require an EIS.
- RGU = local governmental unit.

**Issues Associated with Development Near Highly Important Natural Resources**

Minnesota's growing population and dramatic increase in the number of homes, second homes, and summer homes has intensified the development pressure on remaining undeveloped lands. Many of these lands contain highly important natural resources that may be damaged or greatly diminished by nearby development. Negative effects of development on natural habitat and wildlife include habitat loss, fragmentation of habitat isolation of remaining habitat, reduced populations or extirpation of species, invasion and degradation of natural communities by non-native species, among others. These effects may be felt directly on the site receiving the development and indirectly on adjacent, nearby or more distant sites.

Many lands containing highly important natural resources also attract development because they offer expansive or pleasing views of natural landscapes. There is concern that both the amount of development underway or projected in the vicinities of highly important natural

resources will degrade valued aspects of Minnesota's character and natural heritage.

Further, many highly important natural resources are experiencing multiple development projects at multiple points on their periphery. The problem is that environmental review for a given project rarely considers these multiple recent projects or anticipated future projects for their cumulative effects on nearby highly important natural resources. Clarification on minimum considerations to be included in cumulative effects analysis would help alleviate this problem and improve review.

## **Rationale**

The EQB staff has noted that over the past several years the number of citizens' petitions on projects near sites of highly important natural resources has increased noticeably and that the types of projects involved have prompted

concern from a broad array of Minnesota legislators and organizations representing many Minnesota citizens.

EQB has also been contacted by the Minnesota Conservation Federation, Minnesota Center for Environmental Advocacy, Ducks Unlimited, a wide range of other civic, conservation, and environmental organizations, and concerned citizens and legislators. All have urged the EQB to adopt categories for development near highly important natural resources.

While development on the edges of Minnesota's highly important natural resources is nothing new, increasing new development pressure and the accumulated effects of past and continuing habitat loss has prompted EQB staff and many others to conclude that the existing mandatory review categories may no longer be adequate to ensure effective review of development projects near many of Minnesota's most valuable natural resources.

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